vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5231 OF 1997

Shri Ganpat K. Sanade ... Petitioner

V/s.

The Managing Director
Nasik Sahakari Sakhar Karkhana Ltd. ... Respondent

Ms.Seema Sarnaik i/b Ameya Tamhane for Petitioner
Ms.Deepali Kale i/b P.N. Joshi for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 24, 2007**

ORAL JUDGMENT:

. The Petition has been filed against the order of the Labour Court rejecting the application for amendment at Exhibit 61. This order was passed on 5.4.1997. The Labour Court held that the application at Exhibit 61 for amendment of statement of claim, was belated and the amendment application filed after 12 years could not be granted. The Labour Court also observed that another application for amendment at Exhibit 34 was yet to be disposed of.

2. The facts giving rise to the present petition are as follows:

The petitioner claims to be employed with the Respondent from 1.2.1977. The petitioner filed an application

under section 33-C(2) of the Industrial Disputes Act being application (IDA) No.690 of 1985 for recovery of certain dues payable to him under various awards and provisions of law. On 26.6.1992, the petitioner wanted provide additional particulars regarding the claim made by him and, therefore, sought to amend his application at Exhibit 34. The respondent herein resisted the application by contending that Exhibit 34 was not supported by an affidavit. The Petitioner filed an affidavit thereafter. An order was passed by the Labour Court observing that the affidavit was produced by the Petitioner in support of the application only because the respondent employer had pointed out that such an affidavit was required. The Labour Court thus rejected only the affidavit and not the application at Exhibit 34.

2. It appears that after 12 years, the petitioner filed another application for amending his original application filed under section 33-C(2). This application was similar to his earlier application at Exhibit 34. The application was numbered as Exhibit 61. The Labour Court dismissed the application on the ground that Exhibit 34 for amending the original application was yet to be disposed of. The Labour Court also concluded that Exhibit 61 was filed at a belated stage, after 12 years of the filing of the original application

under section 33-C(2).

3. The learned Advocate for the respondent submits that in view of the provisions of Civil Procedure Code, such a belated application cannot be considered by the Labour Court. She submits that it has committed no error in rejecting the amendment application filed after 12 years.

4. Rule 16A of the Industrial Disputes (Bombay) Rules empowers the Labour Court or the Tribunal to permit the parties to amend their statement of claim or written statement if the amendment sought is necessary for the purpose of determining the real issues before it. Besides, the procedure which is required to be followed by the Labour Court or the Industrial Court in deciding the disputes or claims under the Industrial Disputes Act is contained in section 11 of the Act. Only certain provisions of the CPC have been made applicable to the proceedings before the Labour Court/Industrial Tribunal such as (a) enforcing the attendance of any person and examining him on oath, (b) compelling the production of documents and material objects, (c) issuing commissions for the examination of witnesses. Therefore this submission of the learned Advocate for the Respondent must be rejected.

3. In the present case, the Labour Court has erred in not deciding Exhibit 34 while dismissing Exhibit 61. It is true that Exhibit 61 was filed belatedly and, therefore, there is no error committed by the Labour Court in dismissing that application. However, the amendment application filed at Exhibit 34 ought to have been considered by the Labour Court from 1993 onwards. There is no reason why this amendment application has not been decided by the Labour Court for all these years.

4. In view of this, the following order is passed:

i) The Labour Court to decide the application at Exhibit 34 within 15 days from the receipt of this order.

ii) The Labour Court shall then dispose of the application filed under section 33-C(2) of the I.D. Act being application (IDA) No.690 of 1985 within three months thereafter.

5. With these directions, the Petition stands disposed of.